

Last Minute Memorandum

To: STATE BOARD MEMBERS

Date: May 5, 2003

From: Sue Stickel, Deputy Superintendent

Re: ITEM #9

Subject SUPPLEMENTAL EDUCATIONAL SERVICES PROVIDERS REQUIRED BY
SECTION 1116(E) OF THE NO CHILD LEFT BEHIND (NCLB) ACT OF 2001,
INCLUDING BUT NOT LIMITED TO PROPOSED REGULATIONS,
ANNUAL NOTICE TO POTENTIAL PROVIDERS AND REVISED
PROVIDERS APPLICATION

The attached items support the need for emergency regulations to define a “demonstrated record of effectiveness” for providers of supplemental educational services who are approved by the California State Board of Education.

Please insert the following attachments:

[Attachment I](#): Notice of Proposed Rulemaking (pages 1-4)

[Attachment II](#): Finding of Emergency (pages 1-2)

CALIFORNIA STATE BOARD OF EDUCATION

1430 N Street; P.O. Box 944272
Sacramento, CA 95814-5901



Attachment I
Page 1 of 4

TITLE 5. EDUCATION**CALIFORNIA STATE BOARD OF EDUCATION****NOTICE OF PROPOSED RULEMAKING****Supplemental Services**

[Notice published June 6, 2003]

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

The State Board will hold a public hearing beginning at **9:00 a.m. on Thursday, September 11, 2003**, at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Adoption Coordinator of such intent. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Adoption Coordinator. The written comment period ends at **5:00 p.m. on Friday, July 25, 2003**. The Board will consider only written comments received by the Regulations Adoption Coordinator or at the Board Office by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Adoption Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, California 94244-2720
Telephone : (916) 319-0641 FAX: (916) 319-0155
E-mail: dstrain@cde.ca.gov

AUTHORITY AND REFERENCE

Authority:

Reference:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The State Board of Education proposes to add Section _____ to Title 5 of the California Code of Regulations. This section pertains to providers of supplemental educational services that are approved by the State Board of Education.

Title I of the 2001 reauthorization of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et. seq.) requires that certain local education agencies contract with providers of supplemental educational services from a list established by the State Education Agency (SEA.)

These services are primarily tutoring for eligible disadvantaged school children, occurring before or after school, or during inter-session periods. Parents may select a provider from the approved list.

Approved providers of supplemental educational services must have a "demonstrated record of effectiveness." STAR test data on student progress must be available as one factor for determining program effectiveness.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or

(3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Affect on small businesses: The program regulations will not have an affect on small businesses because the regulations only apply to Local Education Agencies (LEAs).

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the

State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations should be directed to:

Jerry Cummings, Consultant
Specialized Programs Division
California Department of Education
1430 N Street, Room 4309
Sacramento, CA 95814
E-mail: jcumming@cde.ca.gov
Telephone: (916) 319-0381

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to Debra Strain, Regulations Adoption Coordinator, or to the backup contact person, Natalie Vice, at (916) 319-0642.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the

proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications which are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's website at <http://www.cde.ca.gov/regulations>.

Finding of Emergency

The State Board finds that an emergency exists and that the foregoing regulation is necessary for the safety of California's public school children and to bring California into compliance with federal law.

Title I of the 2001 reauthorization of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et. seq.) requires that certain local education agencies contract with providers of supplemental educational services for eligible students. These services are primarily tutoring for eligible disadvantaged school children, occurring before or after school, or during inter-session periods. Parents may select a provider from an approved list. Providers must have a demonstrated record of effectiveness pursuant to 20 U.S.C. Section 6316 (e)(1).

In June 2002, the SBE began to approve providers on a monthly basis with the contingency that any provider appointed to the list would need to reapply in June 2003. STAR test data covering the period that providers offered services will not be available until August. Thus, the Board needs this regulation on an emergency basis to establish criteria for granting provisional approval to supplemental educational services providers by June 2003.

To ensure that the approved providers have a demonstrated record of effectiveness, including the provision of services in safe and secure environments, the regulation allows providers to be appointed to the list on a provisional basis, thus allowing time for STAR data to become available and the provider to demonstrate that the services provided meet the intended goals and are not injurious to the students served.

Authority and Reference

Authority: EC 33031

Reference: 20 United States Code 6316(e)(1)

Informative Digest

Existing federal law requires that the State Education Agency (SEA) establish a list of approved providers of supplemental educational services that have a "demonstrated record of effectiveness." Existing law provides that the State Board of Education is the authority to serve as the State Education Agency for federal programs (E.C. Section 12000)

Section 13075, Definition of a Demonstrated Record of Effectiveness

This regulation will establish a definition for a demonstrated record of effectiveness for providers of supplemental educational services. The effect of the regulation is to ensure that the safety of students who receive services is protected and that the state has the necessary test data for making a determination as to the efficacy of the services provided.

Mandate on Local Agencies or School Districts

State Board has determined that Section 13075 does not impose a mandate on local agencies or school districts.

Cost Estimate

State Board determined that the regulation will involve no costs or savings to any State agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Section 17561 of the Government Code, and no costs or savings in federal funding to the State. Federal funding may or may not be jeopardized if the State is unable to establish a list of supplemental educational service providers.